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IN THE

Supreme Court of the United States

_____TERM 1968

NO. 1238

WILLETT WILSON, *Appellant*

v.

CITY OF PORT LAVACA, TEXAS, AND K. A. WALLACE and HIS SUCCESSORS IN HIS CAPACITY AS MAYOR OF SAID CITY, *Appellees*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS

JURISDICTIONAL STATEMENT

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SUBJECT INDEX

	Page
Jurisdictional Statement	1
Opinion Below	1
Jurisdiction	2
Questions Presented	2
Statutes Involved	3
Statement	3
The Questions Are Substantial	5
Appendix "A"	9
Appendix "B"	14

CITATIONS

City of Orange v. Levingston Shipbuilding Co., 258 Fed. 2d 240, 246, 247	5
Whelan v. State, 282 S.W.2d 378, 383	6
Wilson v. City of Port Lavaca, 407 S.W.2d 325 (Tex. Civ. App. 1966)	4

CONSTITUTIONAL PROVISIONS

Amendment XIV, Section 1, United States Constitution	2, 3, 4, 5, 6
Article VIII, Section 1, Texas Constitution	3, 5, 6

STATUTES

Title 28, USCA, Section 1253	2
Title 28, USCA, Section 1331	2
Title 28, USCA, Section 2101	2
Title 28, USCA, Section 2201	2
Title 28, USCA, Section 2281	2
VTCS, Article 342-709	2, 3, 4, 5, 6
VTCS, Article 7145	3, 5
VTCS, Article 7147 and VTCS, Article 7149	3, 5

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Appellant appeals from the judgment of the United States District Court for the Southern District of Texas, entered on January 23, 1968, dismissing a complaint seeking injunctive and declaratory relief from a three-judge court.

OPINION BELOW

The opinion of the District Court for the Southern District of Texas, Victoria Division, is not yet reported.

A copy of the opinion and judgment is attached hereto as Appendix "B".

JURISDICTION

Appellant brought this suit under *28 U.S.C. Sections 2281 and 1331*, seeking a declaratory judgment that a portion of *Texas Statute, Article 342-709* is unconstitutional, being violative of *Amendment XIV, Section 1 of the United States Constitution*, and asking that the Appellees, the CITY OF PORT LAVACA and its MAYOR, be enjoined from invoking the operation thereof, to prevent Appellant from securing evidence of taxable bank and savings and loan deposits to show their omission from the City's tax rolls, thereby causing unequal taxation. An injunction was also sought to restrain the City from enforcing its tax lien on Appellant's property until a determination may be had on the merits of this cause. The judgment of the District Court was entered on January 23, 1968, and notice of appeal was filed in that court on March 7, 1968. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by *Title 28, United States Code, Sections 2101(b), 1253 and 2201.*

QUESTIONS PRESENTED

A. Whether a portion of *Texas Statute, Article 342-709* is in violation of *Amendment XIV of the United States Constitution*, in that it denies Appellant evidence, from the only available source, the local banks and savings and loan institutions, of large amounts of unassessed taxable deposits needed to show unequal and unfair taxation as a defense to the City's tax suit.

B. Whether Appellant is entitled here to the equitable relief sought, in his complaint, his state court remedies having proven inadequate.

STATUTES INVOLVED

Texas Revised Civil Statutes, Articles 342-709, 7145, 7147 and 7149; and *Amendment XIV, Section 1, United States Constitution;* and *Article VIII, Section 1, Texas Constitution.*

STATEMENT

Appellant is the owner of real property in the City of Port Lavaca, Texas, and has been in controversy with the City over his ad valorem taxes. As that dispute is vitally related to the issues presented here, at least some of the history thereof must be examined.

Appellant instituted suit in the District Court of Calhoun County, Texas, attacking his assessment and making the contention so often pressed in Texas that personal property generally is not assessed. He sought to make proof that the provisions of the Texas Constitution and statutes which provide for equal taxation had been violated by reason of the omission from the tax rolls of deposits in the various banks and savings and loan associations in the city. See, *Art. VIII, Sec. 1, Constitution of Texas; Tex. Rev. Civ. Stat., art. 7145 (1925).* The argument is, of course, that inclusion of these deposits on the tax rolls would have substantially reduced the taxes imposed on his real estate.

To make his proof, Appellant sought to take the deposition of certain banking officials to secure a list of the

depositors and the amount of each deposit to show that they were not assessed on the tax rolls. He was not permitted to pursue this course, however, by reason of the terms of *Article 342-709 of the Texas Revised Civil Statutes,* which provide:

> ". . . neither shall any bank be required to disclose the amount deposited by any depositor to third parties except where (i) the depositor or owner of such deposit is a proper or necessary party to a proceeding in a court of competent jurisdiction in which event the records pertaining to the deposit of such depositor or owner shall be subject to disclosure or (ii) the bank itself is a proper or necessary party to a proceeding in a court of competent jurisdiction . . ."

Having lost his case in the trial court, an appeal was taken to the Court of Civil Appeals where he was also unsuccessful. *Wilson v. City of Port Lavaca,* 407 S.W.2d 325 (Tex. Civ. App. 1966). The Texas Supreme Court denied writ of error; and no application for certiorari was made to the United States Supreme Court.

Appellant filed a complaint in the United States District Court seeking declaratory and injunctive relief from a three-judge court, by restraining the operation of a portion of *Texas Statute, Article 342-709,* on the ground of its unconstitutionality. It is contended that it is violative of *Amendment XIV of the United States Constitution,* in that it permits banking institutions to refuse to furnish Appellant evidence of individual deposits needed to be able to show their omission from the tax rolls, causing unequal taxation of Appellant's property, which would be a defense to the City's tax suit. (See Appendix "B" for copy of opinion of District Court.)

THE QUESTIONS ARE SUBSTANTIAL

There is no source, other than the banking and savings and loan institutions, where this information of individual deposits can be completely and accurately secured, and Circuit Judge John R. Brown in *City of Orange v. Levingston Shipbuilding Co.*, 258 Fed.2d 240, 246, 247, says:

> ". . . it is essential to prove how much of these deposits represented property subject to tax by the City of Orange. From the reported total would have to be excluded all balances of federal, state, county, municipal, school, or other governmental entities, governmental administrative agencies and corporations, deposits of exempt charities such as schools, churches, hospitals, community chests, and the like, as well as deposits of a kind which, under Texas law, would be taxable only at the residence of the owner, not the situs of the deposits."

If a person wants to escape ad valorem taxation of his money, all he has to do under *Article 342-709* is deposit it in a bank or savings and loan institution and not render it for taxation. He has no worry for the institution does not have to tell anyone, even the tax assessor, who their depositors are, or how much any depositor has in the institution, so whether it is a few hundred or several million dollars it escapes taxation. Since all deposits are made taxable by *Texas Statutes, Articles 7145, 7147 and 7149*, except those exempted by statute, there can be no equal taxation under *Article VIII, Section 1 of the Texas Constitution*, unless the taxable deposits in the institutions can be determined and taxed. *Texas Statute, Article 342-709*, prevents this, and by so doing, violates *Amendment XIV, Section 1 of the United States Constitution* because it denies Appellant and all other taxpayers due process of

law and the equal protection of the laws. There is no way for Appellant to defend against tax suits for unequal taxes, caused by large amounts of taxable deposits being left off the tax rolls and not taxed except by determining and showing these amounts, and he has been deprived of this defense to the City's tax suit by *Texas Statute, Article 342-709*. Justice Calvert of the Texas Supreme Court says this deprivation makes the statute unconstitutional. In *Whelan v. State*, 282 S.W.2d 378, 383, Justice Calvert says:

> "[12, 13] Article 7329 limits the defenses which may be interposed to suits for delinquent taxes. Subdivision 3 of that article reads as follows: 'That the taxes sued for are in excess of the limit allowed by law, but this defense shall apply only to such excess.' The language of subdivision 3 cannot be construed to mean that a taxpayer may defend against a suit for taxes only when his property is assessed at more than its fair market value or when the rate levied is in excess of that allowed by law. To so hold would require that the statute be held unconstitutional for it would operate to deny to the taxpayer his constitutional right to be taxed on an equal and uniform basis with others. The legislature has no power to sanction discrimination between taxpayers by taking away defenses.

This tax shelter of bank and savings and loan deposits under *Texas Statute, Article 342-709*, is a continuing violation of *Article VIII, Section 1 of the Texas Constitution* and of *Amendment XIV, Section 1 of the United States Constitution* since it permits a taxpayer whose assets are money on deposit to escape all ad valorem taxation because they cannot be determined, while taxpayers whose

assets are real property are required to carry the tax burden, because their property cannot be hidden. We believe that the questions presented by this appeal are substantial and that they are of public importance.

Respectfully submitted,

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